IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

CRP.No. 235 of 2004

(AGAINST THE ORDER IN E.P.NO.45/1997 IN OS.79/1980 of MUNSIFF COURT, KOTTARAKKARA)

REVN. PETITIONER/PETITIONER/DECREE HOLDER

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* KALYANI AMMA D/O. KARTHYANI AMMA,
KUNKUMASSERY PUTHEN VEEDU, PALLIKKAL MURI,
MYLOM.
*(*EXPIRED. LEGAL HEIRS ARE IMPLEADED AS ADDITIONAL PETITIONER NOS. 2 TO 4)*

ADDITIONAL PETITIONERS 2 TO 4:

2. *R. DIVAKARAN PILLAI,*
KUNKUMASSERY PUTHEN VEEDU,
PALLICKAL P.O.,
KOTTARAKKARA.

3. *JAGADAMMA,*
KUNKUMASSERY PUTHEN VEEDU,
PALLICKAL P.O. KOTTARAKKARA.

4. *DEVAKI AMMA,*
KUNKUMASSERY PUTHEN VEEDU,
PALLICKAL P.O. KOTTARAKKARA.

(*ADDITIONAL PETITIONERS 2 TO 4 ARE IMPLEADED AS THE LEGAL HEIRS OF THE DECEASED PETITIONER VIDE ORDER DATED 09.08.2006 IN I.A.NO.2214 OF 2006.)

BY ADV. SRI.REJI MATHEW KAVALAYIL

RESPONDENTS/RESPONDENTS/ JUDGMENT DEBTORS

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1. LEKSHMI AMMA PARUKKUTTY AMMA @
BHARGAVI AMMA, CHULLIKKODEMELATHIL, PALLIKKAL MURI
MYLOM VILLAGE.

2. GOVINDA PILLAI RAGHAVAN PILLAI,
CHULLIKKODEMELATHIL, PALLIKKAL MURI, MYLOM VILLAGE

BY ADV. SRI.V.PREMCHAND
ADV. SRI.ASHA JYOTHY

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 15/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

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C.R.P. No. 235 OF 2004

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Dated this the 15th November, 2007

O R D E R

The decree holder in O.S.No. 79 of 1980 on the file of the court of the Munsiff, Kottarakkara filed Execution Petition, under Order XXI Rule 32 of the Code of Civil Procedure against the respondents herein alleging that the respondents have violated the decree. The court below dis-believed the case put forward by the revision petitioner/decree holder and dismissed the Execution Petition by the impugned order in this revision. After filing the Revision, the decree holder died and her legal representatives were impleaded as additional revision petitioners.

2. The petitioner obtained a decree declaring her title and possession of the decree schedule property. The defendants were restrained from trespassing upon the decree schedule property and from destroying its boundaries. The decree holder was also allowed to put up a boundary on 'FH' line shown in Ext.C2 plan attached to the decree. The case of the decree holder is that in terms of the decree, a boundary was put up by the petitioner on 'FH' line on 10.02.1989. On the same date, the respondents removed the boundary and cut a 'vatta' tree. Loss is estimated by the decree holder at Rs.3,500/-.

3. The respondents denied the allegation of violation of the decree . They contended that no boundary was put up on 'FH' line and the boundary was never destroyed.

4. Before the court below, the daughter of the decree holder was examined as P.W1 and two other witnesses were examined as P.Ws. 2 and 3. The court below considered the oral evidence adduced in the case and was not inclined to accept the case put forward by the decree holder. The allegation is that the decree was violated on 10.02.1989. But the Execution Petition under Order XX1 Rule 32 of the Code of Civil Procedure was filed only on 06.06.1997. The explanation attempted to be offered by the decree holder is that she had filed a complaint before the police and that was why the Execution Petition was filed 8 years after the date of the alleged violation. No acceptable evidence was produced before the court to establish that she was prosecuting in good faith another proceedings. The court below rightly held that there was inordinate delay in filing the application. The evidence adduced in the case was considered by the court below. On facts, it was held that there was no violation of the decree. I do not think, exercising jurisdiction under section 115 of the Code of Civil Procedure, this court would be justified in interfering with the finding of facts in the well considered order passed by the court below. The Civil Revision Petition lacks merit and it is accordingly dismissed. No order as to costs.

K.T. SANKARAN,
JUDGE.

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